IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Not Restricted
Suitable for Publication

Case Nos. CR-18-00582 and CR-19-01032
Indictment No. G13086039.A

DIRECTOR OF PUBLIC PROSECUTIONS

v

WILLIAM VLAHOS

JUDGE:	HIS HONOUR JUDGE TRAPNELL
WHERE HELD:	Melbourne
DATE OF HEARING:	4 and 5 February 2020, 24 November 2021
DATE OF SENTENCE:	17 December 2021
CASE MAY BE CITED AS:	DPP v Vlahos
MEDIUM NEUTRAL CITATION:	[2021] VCC 2074

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW – Sentence
Catchwords:	Sentence – Obtaining financial advantage by deception – Ponzi scheme – False representations of a legitimate punting club – Breach of trust – Defrauded over $17.5 million from punting club investors over 6 years – – 71 victims – Very serious offending – Sophisticated crimes committed to support extravagant lifestyle – High moral culpability – Early plea of guilty – No prior criminal history – Verdins principles 1, 3, 4 and 5 engaged – Delay – Family support – Very good prospects of rehabilitation – COVID discount
Legislation Cited:	-
Cases Cited:	-
Sentence:	9 years' imprisonment with 6 years' non-parole period

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APPEARANCES:	Counsel	Solicitors
For the Prosecution	Ms D Mandie Mr L Cameron	Ms A Hogan, Solicitor for Public Prosecutions

For the Accused	Mr J P Wheelahan Mr S N Andrianakis	Stary Norton Halphen Lawyers

HIS HONOUR:

1 William Vlahos, you have pleaded guilty to an indictment containing two charges of obtaining financial advantage by deception. The maximum penalty for each offence is 10 years' imprisonment.[1]

2 The prosecution filed a Prosecution Plea Opening dated 24 September 2019 ('Opening') which contains the agreed facts and circumstances of the offending.[2] This prosecution opening was signed by you, your counsel and solicitor on 30 September 2019. For the purpose of sentencing you, I accept the facts outlined in the prosecution plea opening as a statement of agreed facts[3] and I incorporate that document into these reasons for sentence by reference. What follows is a necessarily brief summary of your offending conduct.

3 The facts

4 <u>Background</u>

5 In about 2001 or 2002, you developed a keen interest in the thoroughbred racing industry and wagering on horse races. In 2001, you told James Jones, who was soon to become your brother-in-law, you were toying around with a betting system to assist in selecting winners.

6 In about mid to late 2002, while you were residing in New South Wales, you told a close friend, Ben Kingsley, you had developed a 'punting system'. You told Kingsley about your plans to start a 'punter's club' and to become a professional punter. You said the best way to make wagering your full-time business was to recruit investors and build up a pool of money and you would then take a percentage of the winnings. You called this punting club 'The Edge' ('the punting club'). You started the punting club around late 2002 or early 2003, some five years before the present offending began. The Edge is the origin of the punting

[1]Pursuant to *Crimes Act 1958* s 82(1).
[2]Exhibit ('Ex') P1.
[3]See *Evidence Act 2008* s 191(1).

club at the centre of the present offences.

7 You started the punting club as a small hobby or social club, made up of friends pooling their money to be wagered. You explained to others you had a system that helped with the selection of winning horses.

8 You then sought to expand the punting club fund and made it known you wished to make a living from the commissions and accumulated betting winnings.

9 In about late 2003 or early 2004, you and your wife, Joanne Vlahos, moved to Melbourne where the punting club began in earnest. Initially, you worked as a counsellor in Melbourne with your university colleague Kimberley Stephens. You opened a counselling business together in January 2005.

10 In about 2004 or 2005, you approached a childhood friend, Mr Anthony Rizos, and told him you had a formula for picking horse-racing winners. After some discussion, Mr Rizos offered to contribute $50,000 to the fledgling club to become a 50% partner. This partnership was never formalised. Mr Rizos did not know how to develop the ratings but thought your system involved identifying horses which were picked to win. While Mr Rizos understood the fundamentals of the way the punting club betting sheets worked, he did not understand the ratings aspect of the system as you never explained to him how it worked. You kept the method of operation of the punting club to yourself. Initially, you and Mr Rizos each took a 5% commission on any winnings. There is no suggestion Mr Rizos was in any way complicit in your offending conduct. He was your innocent agent.

11 In about 2006, the Stephens Vlahos counselling service moved from Elwood to various addresses around the centre of Melbourne and later, in 2008, it moved to South Melbourne. In about 2006 or 2007, you told Kimberley Stephens about the punting club and said there was approximately $1 million in the betting pool. You had by then begun purchasing shares in racehorses which raised your profile in

the racing industry.

12 In about January 2008, you commenced another business via BC3 entities. Over the period from January 2008 to August 2013, you registered BC3 and its related entities, and involved them in the 'pin-hooking' business. The 'pinhooking' business involves purchasing thoroughbred yearlings, preparing and training them and then re-selling them for a profit.[4]

13 By the end of 2007 and early 2008, with the commencement of the BC3 business, you became less involved in the Stephens Vlahos counselling business. Your focus shifted to the punting club and the thoroughbred industry through BC3.

14 You and your family's lifestyle and the BC3 business were funded by money you derived from The Edge punting club venture.

15 Summary of offending

16 From about late 2007 to 6 December 2013, while under your control, the punting club grew to approximately 1800 investors across 50 to 61 syndicates.

17 Between 1 January 2008 and 31 December 2013 (‘the offending period’), you deceived investors in the punting club, whether leaders of the betting syndicates or direct investors in the punting club, into investing their funds into the punting club. During the offending period, you repaid some investors, with the financial advantage derived by you across that period calculated as the capital loss to the investors. This equates with the net benefit received by you from the scheme. It is this ‘net credit’ to your personal bank account which has been specified in the charges.

18 The two charges of obtaining financial advantage by deception on Indictment No. G13086039.A (‘the indictment’) represent the financial advantage obtained by

[4] See Pinhook Bloodstock International website, FAQs, ‘What Does the Word “Pinhook” Mean?’, https://www.pinhook.com.au/faqs (accessed 12 December 2021).

you as follows:

19 Charge 1: From 1 January 2008 to 31 December 2009, you dishonestly obtained $12,836,515.90 from punting club investors, as detailed in Schedule A to the indictment.

20 Charge 2: From 1 January 2010 to 31 December 2013, you dishonestly obtained $4,683,709.07 from punting club investors, as detailed in Schedule B to the indictment.

21 The punting club scheme continued throughout the offending period. In 2013, you endeavoured to repay the many investors seeking payouts with the result there was no net benefit to you in that year. Withdrawals for the purposes of pay outs to investors from the punting club in 2013 exceeded investments, resulting in a net loss to you of $11,644,616.59. However, you continued to receive funds from investors in 2013. In each other year of the offending period, you made a profit. The total financial advantage to you during the entire six-year offending period is $17,520,224.97.

22 The majority of the payments made by punting club syndicate leaders and investors were made into your personal National Australia Bank ('the NAB account').

23 The NAB account was used primarily for the operation of the punting club. You opened the account on 23 February 2004. You were the sole signatory to the account. The first recorded transaction in this account, which was allegedly linked to the punting club, is a deposit on 25 March 2004 of $70 with the description, 'The Edge top up'.

24 Forensic accounting of the NAB account revealed a total amount of $128,307,076.43 was credited and $110,786,851.46 was debited to this account during the relevant period. The total financial advantage to you across the offending period of $17,520,224.97 is calculated as the actual loss to the named

victims and the net benefit to you.

25 The funds deposited by the victims to the NAB account were used by you to fund your lifestyle, pay out investors in the punting club and to operate your business interests which included the various BC3 entities.

26 There are 71 victims relating to the two charges who are detailed in Schedules A and B to the indictment. There were up to 61 syndicates in total identified as being part of the punting club during the offending period, out of which 35 syndicates are relevant to the charged offending.

27 Generally, over the offending period, on Friday nights or Saturday mornings, you would send out betting sheets which purported to detail the horses to be backed that day in Sydney and Melbourne race meetings. The following day, you would send out betting results sheets to syndicate leaders and investors, detailing what purported to be the betting results. These bets were either not laid at all or were not in amounts remotely resembling those set out in the betting results sheets.

28 Over the offending period, the betting numbers attached to the betting sheets were not true or accurate. The betting sheets and the betting results sheets contained false information. Essentially, the punting club was a 'Ponzi scheme' in which funds 'invested' by the syndicates and their members were utilised to pay other members out and to service your unrelated personal expenditure and your BC3 business. The betting and results sheets sent to members were meaningless. They did not reflect actual bets placed or results obtained, or amounts won or lost.

29 The United States Securities Exchange Commission provides a useful definition of the nature of a ‘Ponzi scheme’:

> A Ponzi scheme is an investment fraud that pays existing investors with funds collected from new investors. Ponzi scheme organizers often promise to invest your money and generate high returns with little or no risk. But in many Ponzi schemes, the fraudsters do not invest the money. Instead, they use it to pay those who invested earlier and may keep some for themselves.

> With little or no legitimate earnings, Ponzi schemes require a constant flow of new money to survive. When it becomes hard to recruit new investors, or when large numbers of existing investors cash out, these schemes tend to collapse.
>
> Ponzi schemes are named after Charles Ponzi, who duped investors in the 1920s with a postage stamp speculation scheme.[5]

30 Similarly, you made other false representations to syndicate leaders and to investors throughout the offending period, either by way of email or documents sent by you or orally in conversations, that the punting club was a legitimate club rather than a Ponzi scheme and betting by the club was yielding excellent results.

31 Your false representations were operative on the syndicate leaders and direct investors or members, leading them to believe this was a legitimate punting club and thereby caused them to deposit money into the NAB account. You obtained the respective financial advantages by reason of these deceptions.

32 From around late 2010, and in emails from 2012, you made misrepresentations regarding a fictional person named 'Daniel Maxwell' or 'Max' in order to misrepresent the betting system of the club as having access to a much larger betting market available offshore through ‘Max’. You relied on 'Max' to misrepresent certain thresholds required and rebates available via this offshore punting market. You misrepresented the offshore punting market would provide larger returns and misrepresented the financial position of the punting club.

33 These misrepresentations regarding 'Max' were made by you to syndicate leaders and investors in order to extract more funds from them and to deter them from withdrawing funds already deposited from the club's pool. Your dishonesty included your manufacturing false documents relating to bank accounts and other documents to misrepresent the financial position of the punting club.

34 From about 2012, in the shadow of the impending financial collapse of the Ponzi scheme, you continued to use the fiction of ‘Max’ and the need to maintain

[5]United States of America, Securities Exchange Commission, Inverstor.gov website, ‘Ponzi Scheme’, https://www.investor.gov/protect-your-investments/fraud/types-fraud/ponzi-scheme (accessed 12 December 2021).

certain thresholds. You also provided false information regarding the financial position of the club to mislead investors. While by this stage the purpose of these deceptions appears to have been to prevent panic amongst the punting club members, and a consequent rush on funds, you continued to deceive punting club members regarding the financial viability of the scheme.

35 From its beginning, the punting club operated on the basis of trust, with no written agreements, and in some secrecy. Investors were largely introduced to the punting club because they knew you or your wife Joanne or they knew someone who knew you and your wife.

36 Investors vouched for you. They heard of the great returns others were receiving from friends or associates and were then given further reassurance from you.

37 One example will serve to illustrate how word got around. Victim Mark Selleck (‘Selleck’) first heard about the punting club in 2006 from his brother Mathew Selleck and indirectly from Mathew's work manager, Paul Bevilacqua. Mathew and Paul told Selleck about the 'spectacular returns' they were getting from the punting club. About a year or so later, after hearing more about the returns and meeting with Paul, Mark Selleck decided to become an investor in the punting club. Before making the investment, he met with you and you reassured him of the club's legitimacy and spectacular returns.

38 You walked Selleck through the process until he became comfortable with how the club was run. He asked you how you were able to derive such spectacular returns and what guarantees there were that you would not take his funds. You provided logical answers and Selleck left the meeting feeling comfortable that the punting club was legitimate and that you were genuine and had a love for the thoroughbred industry. It was in this way you deceived victims such as Selleck into thinking any funds invested would be used to place bets on thoroughbred races on their behalves.

39 Additionally, Selleck's initial meeting with you took place in Melbourne where you took him to a cafe to meet your wife, Joanne Vlahos. At a later stage, you told Selleck your wife was often present during meetings with prospective investors so they would have a higher level of confidence in both yourself and in the punting club. There is no suggestion your wife was complicit in your frauds or knew the true nature of your dealings.

40 In response to Selleck asking how he could be sure you would not run off with his funds, you told him you did not want to be looking over your shoulder for the rest of your life looking out for guys like Selleck.

41 Selleck's brother, Matthew Selleck, also introduced Glenn Bowen to the punting club in around 2007. Matthew Selleck said he knew you from his work at Guest Furniture and told Bowen you were a 'genius' with regard to your punting knowledge and of the positive returns being derived from your scheme. Once Bowen was approved as a new investor by you, for his own peace of mind, he rang you and asked for more information regarding how the club operated. You spoke with him briefly and said he could enter the club under Matthew Selleck's group.

42 When he joined, Bowen was told you take 10% of the winnings as an administration fee, which was around 3% to 4% of the group result, with the maximum amount for an administration fee capped at around $3000 per group. Mathew Selleck explained the fees and the purported betting structure of the punting club to Bowen and said that you 'had a mathematical formula to be winners in horse races'. Bowen says he joined in the third quarter of 2007 and he understood in the previous quarter there was a 33.5% return on investment.

43 From the time investors joined the punting club, they understood the betting was for horseracing in Australia in either Sydney or Melbourne. This remained the case throughout the investors' time in the punting club. From the time they

joined, they received the weekly emails, being the email on a Saturday morning listing the horses that were to be bet on, followed by another email on Sunday showing the results.

44 You often referred to your childhood friend Mr Rizos, who provided $50,000 equity in the partnership of the punting club, as your business partner. Mr Rizos also introduced many people to the punting club. Mr Rizos says he was not asked to promote the club. However, news of the punting club spread by 'word of mouth' and Mr Rizos's many contacts would call him about the club. He would then check with you and you would generally let the new investors join. Mr Rizos says a large majority of the punting club were people he had introduced through his contacts.

45 Over the punting club's lifetime, 1800 people were identified as being a part of the club at different stages. As it grew, you loosely structured the punting club into between 50 and 61 betting syndicates, some being sub-syndicates. The syndicates were headed and managed by syndicate leaders. Generally, investors would provide funds to the syndicate leader who would then transfer the funds to the NAB account into the betting pool for the purported placement of bets. The exceptions were where syndicate members deposited directly into the NAB account and other direct investors, who were not members of syndicates.

46 Throughout the offending period, you told syndicate leaders and investors, or it was otherwise communicated to them by emails, the punting club laid bets on thoroughbred racing and conducted at weekend race meetings in Melbourne and Sydney. Occasionally, it was communicated that bets were being placed on Friday night or midweek race meetings or on Queensland or country races.

47 You sent the syndicate leaders a weekly email, usually on Friday night or Saturday morning setting out the betting for Saturday's race meetings. Usually on Sunday afternoon or by Monday, you would send out emails with the results. The

results sheet would detail the betting results and these results were generally represented as a percentage figure won or lost. These betting sheets and results were usually passed onto the syndicate members who would then transfer funds to the syndicate leaders to put into the pool, being the NAB account.

48 In some cases, the syndicate leaders would pool the syndicate members' funds and pay out investors from this pool but then deposit the remaining money into the NAB account, or else request money from you to facilitate payments to members.

49 The punting club purportedly operated on a quarterly basis, with club members being allowed to withdraw or add to their current position at the end of each quarter, with you taking a commission or ' take out fee' of around 10% at the end of each quarter.

50 Allegedly, you actually obtained your ‘ratings’ from a horse form and ratings analyst company called 'Expert Form'. You had been a customer of Expert Form since about 2006 or 2007 and subscribed to 'Expertform Rates' which allows the user to log into the website and obtain rating information for horses in a race with other information, such as track conditions and how the horse was placed in the race. The weekly results sheets advising of purported winnings and profits to the punting club led further people to join and invest in the punting club.

51 <u>BC3 and Noble Edict</u>

52 Through David Bernsen, a contact you made in the global racing industry, you met John Brocklebank, a United States (‘US’) resident involved in thoroughbred breeding and a pin-hooking business.

53 Emerging from this introduction to Brocklebank and his business in the US, you purchased a registered shelf company on 1 January 2008. You named this company BC3 Australia Pty Ltd. You were the company’s sole director. BC3 followed the 'pin-hooking' business model throughout the relevant period, though

the business grew more ambitious, and the structuring of the business' corporate entities changed over time. From mid-2013, you planned to expand the BC3 business into the acquisition of stud horses and stabled properties as the previous business model had not been profitable.

54 BC3 was initially located at your place of business in South Melbourne and operated a farm at Sutton Grange, near Bendigo in Victoria. In October 2011, the company moved its operations to 80 Randles Road, Connewarre, Victoria. Through your company, Noble Edict Pty Ltd (‘Noble Edict’), you purchased the Connewarre property and proceeded to install a training track and stables and performed landscaping and added other infrastructure. In December 2013, BC3 was placed into administration and the sale of the Connewarre property was never finalised.

55 You were the sole director of BC3 until your resignation on 9 December 2013 when the administrators were appointed.

56 Aside from BC3, throughout the relevant period, you were involved in a number of other companies and business investments. You were a co-director and silent partner in Swig Wine, an online wine sales and delivery business. You contributed over $100,000 to Swig Wine between October 2007 and April 2009, using funds from the NAB account. From 2009, the business was failing and was deregistered in 2011.

57 On 2 November 2007, you and your wife registered Noble Edict. Your wife was the sole director until you replaced her in March 2012. According to your accountant, this entity was to be a trustee company for the Noble Edict Investment Trust, a trust set up initially to hold investments established or purchased by you. For example, the equity you held in Swig Wine was placed in Noble Edict. Noble Edict continued until it was placed into administration on 10 December 2013.

58 You opened two bank accounts in the name of Noble Edict with the National Australia Bank, one of which was used primarily for punting club transfers. The other account related to your other business interests, including BC3.

59 On 27 November 2013, the Aloga syndicate (Aloga Limited) commenced civil proceedings against you in the Supreme Court of New South Wales. While this civil proceeding did not involve any of the victims, you informed the other syndicates and punting club members of the civil action and that funds had been frozen and could not be released.

60 By December 2013, you appointed PCI (Personal and Corporate Insolvency) to administer your personal bankruptcy. On 9 December 2013, Moore Stephens were administrators appointed to BC3 entities. On 11 December 2013, Grant Thornton Australia were administrators appointed to Noble Edict.

61 On 28 August 2015, you were arrested and interviewed at the Torquay police station. You exercised your right to make a 'no comment' record of interview.

62 Victim Impact

63 Twenty victim impact statements ('VIS') were tendered. They were made by Ms Claire Arnold, who was your friend and used to babysit for you and your wife when you visited Sydney, Mr Glenn Bowen, Mr Chris Broadhead, Mr Russell Christensen, Mr Keith Cronin, Mr Ray De Jonk, Ms Sally Ann Drake, Ms Andree Maree Job, Mr Ramon John Kingsley, Mr Steven Lloyd Lavery, Mr Mario Ljubicic, Mr Geza Thomas Olah, Mr Gregory Gordon Powles, Ms Frances Schott, who is the partner of your brother-in-law, her sister Ms Sally Schott, Mr Mark Selleck, Mr Mark Arthur Sheppard, Marian and Mark Snehotta, Mr Mark Sutherland and Mr Alexander Tyler.[6]

64 Your counsel did not object to these VIS being tendered, and I have only considered the admissible portions of the contents as agreed by the parties. The

[6] Ex P2.

VIS speak eloquently of the harm your conduct has inflicted on the victims, and your callous disregard for their wellbeing.

Mental, Emotional and Physical Harm Suffered

65 Your offending had a direct impact on the mental wellbeing of many of the victims. Mr Bowen said he was left hopelessly psychologically paralysed. Having to tell the people in his group, whom he cared deeply for, and had introduced to the club that they were all scammed, traumatised Mr Bowen. Mr Bowen was sleeping a maximum of two hours a night. He had to take sleeping tablets and see a psychologist.

66 Mr Christensen is constantly regretful for inviting others to join the punting club, which he wholeheartedly believed was a great thing.

67 Mr Cronin said he had a feeling of worthlessness and stupidity to allow himself to be involved and he felt guilty about how your crimes have affected his close family and friends. He had many sleepless nights running things related to your crimes over and over again in his head. He was so badly affected that he was treated for depression for many years. Mr Cronin stopped taking part in many sports he loved and other activities that make life enjoyable for him.

68 Ms Drake had countless sleepless nights. She suffers awful headaches on a regular basis and has experienced a heightened sense of anxiety in the years since your crimes came to light.

69 Mr Ljubicic said he has received medical and psychological treatment for six years including intense counselling and ongoing meditation since the scheme collapsed. He suffered from major clinical depression. He also suffers from insomnia and takes medication to help him sleep. He suffers from night sweats and constant ruminations about the catastrophe he is enduring.

70 Mr Powles felt anger towards you because of the trust he had in you. The anger

only grew when he realised what you spent money on and the lifestyle you were living.

71 Ms Schott said the anguish your crimes caused her is beyond repair and she will never recover emotionally from your crimes.

Financial Impact

72 Ms Arnold said she handed over the house deposit she had been saving diligently with her partner to you, but your crimes left her with no savings.

73 Mr Cronin also lost the house deposit for his family which took the best part of five years to save.

74 Mr Bowen had to sell all of his shares, his family caravan, his share of a ski boat and his house to clear some debts and to survive. He could not afford even basic outings with his friends.

75 Mr Broadhead had to seek additional financial support from banks and was limited in his ability to invest in other ventures. The stress and anxiety caused by your offending affected Mr Broadhead's ability to focus at work and contributed to him losing his job and being out of work for ten months.

76 As a result of your offending, Mr Christensen was burdened with a large debt. He struggled to afford school fees for his children and his wife had to return to work to help meet their commitments.

77 Mr De Jonk put most of the proceeds of the sale of his business and borrowed up to $800,000.00 to put into the punting club. When your scam was uncovered, he was left with no income or direction on how he could take care of his family. He had no choice but to sell his house to pay debts as a result of your crimes. He said your crimes ripped everything from him, left him with no business opportunity, no home for his family, nothing for his retirement at age 58 and not a single asset.

78 Ms Job said when she transferred $30,000.00 to your account both her and her husband were working. Now that they are both retired, and her husband has been recently diagnosed with dementia. The loss of money made it very stressful for them to survive on the pension.

79 Mr Kingsley said he had to seek legal advice for himself at his own expense and help others in his group to seek legal advice.

80 Mr Lavery said financially, your offending has set him back considerably. As a result, Mr Lavery has to stay working instead of retiring.

81 Mr Olah felt guilty for involving his father and business partner in the punting club. To avoid affecting his relationship, Mr Olah took the burden of the loss and absorbed their debt.

82 Mr Powles invested in your club with a compensation payment his wife received for a back injury. The money would have gone to his children and help them to pay off mortgages and put them in a better financial position. Mr Powles has lost all his future plans.

83 Ms Schott said her financial security has been severely impacted and she will have to work full time for many years rather than being able to retire. She would have been in a position to assist her three children financially but is now unable to do so.

84 Mr Selleck said because of your crimes he could not return to his field of employment as a professional in banking because his colleagues and associates were aware he was a ‘friend’ of yours at the time. Mr Selleck was also forced to sell his home. His financial position was set back for 30 years. He has lost confidence in any form of financial investment because he could not afford to incur any further financial loss. Your crimes resulted in him having to withdraw

one of his children from a private school because he could no longer afford the fees.

85 Mr Sheppard lost over a million dollars of his hard earned money in your scheme. It left him open to massive criticisms from family and friends.

86 Mr Sutherland drew down on his mortgage to invest in your club and was forced to sell personal items and cut down on spending so he could make mortgage payments on his house. Eventually, he was forced to put his house on the market as he could not make the repayments. He would have lost his house if it was not for the help from his wife's family.

87 Mr Tyler invested a total of $80,000 in your scheme. The loss of such savings affected him financially especially since his retirement in 2010.

88 Family Impact

89 Many victims suffered strain on their relationships. Your offending also had a direct impact on their families.

90 Ms Arnold said her husband experienced depression and was devastated by your offending. Your offending has greatly impacted the dynamics in her relationship with her husband.

91 Mr Bowen had to change his children's primary schools and he felt that he ruined his children's lives. At times, the pressure put on his marriage by your offending made him believe his marriage would break. It was only through marriage counselling and the love of his children that made him and his partner stronger.

92 Mr Broadhead faced divorce as a direct result of your offending.

93 Mr De Jonk was the guardian and the provider of his family. Because of your offending conduct, he became the liability of his family. He said no words can describe the hopelessness he felt. Due to the loss caused by your punting club,

Mr De Jonk's family moved four times over the past six years which was especially hard for his two sons.

94 Mr Ljubicic said it took him five years of therapy to summon up the mental strength and courage to go back into the workforce. Up until that time, his wife had to take on the sole breadwinner role while suffering from her own distress. Your offending has affected Mr Ljubicic's confidence and his ability to pursue the career he used to have. Mr Ljubicic struggles to focus on daily work tasks.

95 For Mr Olah, the greatest affect your offending had was the added pressure on his marriage. It created an emotional roller coaster effect and trust issues. Mr Olah was subsequently divorced.

96 Your 'scam' was a huge contributing factor to Mr Sheppard's separation from his wife of over thirty years. He felt the biggest disappointment comes from the fact the funds he invested in your scheme should have been used to give his three sons a better start in life. Now he feels they have been deprived of this.

97 Ms Schott said her relationship of more than nine years with your brother-in-law, James Jones, became fractured and untenable due to the pressure and impact your crimes has had on her and her partner. She was extremely heart broken and devastated by the breakdown of the relationship.

98 Mr Mark Selleck said the deepest emotional impact of your crimes has been among his family. Both his immediate and extended family invested in your club. While they lost their savings, fingers were pointed back to him because he introduced them to you. He said it is hard to put into words the devastation this has caused and the level of damage it has done to his family relationships.

99 Mr and Mrs Snehotta lost their house. They were at the tail end of their working lives, but now they have to start again. Mrs Snehotta still cries most nights. It makes Mr Snehotta feel very sad, extremely stupid and naïve, because he was

the one who convinced Mrs Snehotta to invest in the punting club. They both worked hard to get where they were and your crimes have shattered them and changed them from the fun loving couple who have been married for 30 years to sad, miserable and bitter people, who know they have loans that will never be paid off until they die.

Social Impact

100 It is a common theme among your victims they have developed trust issues caused by your offending.

101 Ms Arnold said the thought that you could steal from her and her family after much good will was shown has left her with significant trust issues and she no longer chooses to engage with new friends. Ms Arnold no longer sees her best friend who introduced you to her because they have both been hurt by your offending.

102 Mr Broadhead said he lost the trust of his wife, himself, other family and friends and has lost trust in his own judgment of character.

103 Mr Kingsley said he is now always second guessing people's intentions and agendas to help. He is now a lot more sceptical and less trusting to others.

104 Mr Christensen now has self-doubt and is reluctant to help others for fear of what could go wrong. His friendships of over twenty years were ended because of your offending. He, his wife, his children, in-laws and friends all received vulgar, threatening and abusive texts aimed at him because of your punting scheme.

105 Mr Cronin said your crimes have robbed him of his friendships.

106 Mr Ljubicic said he now has no friendships to fall back on. He feels isolated and lonely and could not see how this will change.

107 Mr Selleck lost all of his friends he introduced to you after you announced bankruptcy. The friends he lost were the ones he cared about the most, and they have all disappeared from his life because of your crimes.

108 By singling out these comments, I do not in anyway minimise the other effects your crimes have had on your many victims.

109 Your counsel correctly acknowledged that you wreaked havoc on your victims' lives, causing some of them to lose their life savings and become bankrupt. He said: 'This is a heinous objective aspect of the offending'.[7] I agree with that characterisation. You counsel also correctly observed many of your victims 'were seriously financially, emotionally and socially ruined' by your offending conduct.

110 On behalf of the Victorian community, I denounce your offending conduct, and I take into consideration the impact of your crimes on all your victims in sentencing you. Clearly, your offending has had a profoundly traumatic effect and devasting financial and personal impact upon them all.

111 Offence Seriousness

112 Obtaining a financial advantage by deception is a serious criminal offence, carrying a maximum penalty of 10 years' imprisonment. Taken overall, your offending conduct is egregious.

113 Mr Wheelahan of counsel, who appeared with Mr Andrianakis of counsel on your behalf, accepted your offending was very serious and that 'condign punishment and a lengthy term of imprisonment may be richly deserved' in your case.[8]

114 The prosecution correctly, in my view, submitted the nature and gravity of the offences is evident from the agreed facts and circumstances, given the following features:

[7] Plea Skeleton Outline, dated 2 February 2020 [29].
[8] Ibid [78].

115 (a) Planning and scale, including:

116 (i) Prolonged offending;

117 (ii) Significant quantum;

118 (iii) Repetitive and persistent deceptions and transactions throughout the charged periods;[9]

(iv) Premeditation, planning and calculation;

(v) The magnitude of the scheme and the number of victims;

119 (b) Level of moral culpability, including:

(i) Your role as the sole architect and controller of the deceptive scheme;

(ii) Repetitive and persistent offending, inferring knowledge of increasing risk to investors;

(iii) Use of innocent persons to perpetuate the scheme;

(iv) Profit motive, motivated by financial gain, greed and a desire for self-aggrandizement;

(c) Impact on your victims;

(d) Brazen nature of the offending and blatant dishonesty.

120 The two charges are calculated as the net benefit to you and net loss to the victims, being a total benefit or financial advantage obtained of $12,836,515.90 over the two years from 2008 to 2009 and of $4,683,709.07 over four years covering the period 2010 to 2013.[10] In terms of scale, the quantum of your offending conduct is high and indicative of grave offending.

121 Your offending is properly characterised as prolonged lasting six years and involved repeated conduct which was calculated, sophisticated, well-planned,

[9]Because the manner used in calculating the quantum alleged in each charge is the net gain derived from a very large number of separate criminal acts, strictly these are not rolled-up charges. However, in my opinion, similar considerations apply in sentencing the accused on these charges. See *R v Jones* [2004] VSCA 68, [12]–[13] (Charles JA, Phillips JA and Bongiorno AJA agreeing); *R v Beary* (2004) 11 VR 151, 156–57 [11]–[14] (Callaway JA); *Reid (a pseudonym) v The Queen* (2014) 42 VR 295, 308 [74] (Priest JA, Maxwell P and Whelan JA agreeing); *Lugo v the Queen* [2020] VSCA 75 [67] (Maxwell P, Kaye, T Forrest and Emerton JJA).

[10]Summary of Prosecution Opening, dated 24 September 2019, [20] and [46] ('Opening').

and which required significant and sustained effort by you.[11] You created and widely distributed false betting and results sheets about twice-weekly throughout each quarter of each year during the charged periods, in order to perpetuate your deceptions.[12]

122 The falsity of these sheets involved the use of false betting numbers, a false betting selection system and manufactured betting amounts and results and correlating these false representations with actual races and race information to effect your continuing deception of punting club members. This process was itself a complex and sustained endeavour by you which was carried out on a weekly basis for six years.[13]

123 Additionally, you sent out regular and deceptive emails to syndicate leaders and investors to perpetuate the fraudulent scheme, to elicit further investment, discourage withdrawals and to persuade investors of the legitimacy of the punting club.[14] The entire scheme was comprised of repetitive and persistent deceptions and transactions throughout the charged periods.

124 Also relevant to the scale of the scheme is the number of victims, being 71 relevant investors and the 35 betting syndicates to which those victims belonged, established during the charge period. Some of those victims were also direct investors.[15]

125 Objectively, your offending conduct displays a very high level of moral culpability. You were the sole architect and controller of the fraudulent scheme.

126 Given your repetitive and persistent offending conduct, you had full knowledge of the risk of loss and harm to investors, knowing as you did from the start of the

[11] See eg *Eagles v The Queen* [2012] VSCA 102 [32].

[12] Opening [23]–[25] and [39]–[40], Betting and Results sheets set out in Annexure A to the Opening and detailed throughout the Opening.

[13] Opening [58]–[69]

[14] Opening [26] and Annexure C to the Opening.

[15] Opening [21]–[22]; Schedules A and B to Indictment.

period that the punting club was a Ponzi scheme and also that millions of invested funds were going to your personal benefit, including an over-priced race-horse and into his other failing commercial ventures (primarily BC3) which had not ever been profitable.[16]

127 Your knowledge of the risk of your conduct to the victims increased by late 2012, when it became clear the punting club was failing financially and you were under increased financial pressure. However, you continued to accept new investors in the scheme.

128 Moreover, you co-opted innocent persons to perpetuate your scheme; namely, the victims who were also syndicate leaders and others. For example, friend and victim Mr Rizos was initially your 50% partner early on and victim Mr Ljubicic was co-opted as 'auditor' of the scheme, although he was given limited information.[17] You also used your wife to engender the trust of new investors and to perpetuate the scheme and your brother-in-law James Jones as a syndicate leader and therefore a conduit for your deceptions.[18]

129 By portraying yourself as an expert investor and punter, you abused the trust of many, including family members and friends.[19]

130 I accept a significant component of your offending conduct had a personal profit motive, involving sheer greed, a need for personal financial gain and a desire for self-aggrandisement.[20] Some of the punting club funds were directed to BC3 and your thoroughbred business, which was aimed at raising your profile in the racing industry, for example, by purchasing high-profile racehorses.

131 You also spent punting club funds on your family's extravagant lifestyle, including on home repayments, expensive renovations, lavish holidays, cars and other

[16]Opening [14], [47], [203].
[17]Opening [131]–[132].
[18]Opening [137]–[138]
[19]Opening [36] and see eg [119].
[20]Opening [11]–[14], [203], [228]–[29], [317], [322]–[32] and [326].

luxury items and expenditure.[21] The list of your personal expenditure during the offending period is dazzling. You paid for business class travel for yourself, your wife and other relatives.[22] You made payments of thousands of dollars towards your wife's credit card or transferred money to her bank accounts. You made payments totalling hundreds of thousands of dollars for your family's benefit, including over $38,000 on landscaping, $11,000 on home renovations, over $30,000 on a Jacuzzi, $71,000 on an Audi motor vehicle and $149,500 on a Lexus. You paid for accommodation and other holiday expenses for you and your family, including $53,839 at the Shangri-La Hotel in Singapore. You paid $40,229 school fees for your children in Singapore. In March 2013, during a trip to Dubai, you paid $103,213.41 for business class air tickets, luxury accommodation and entertainment for BC3 associates and their friends. You also paid approximately $165,000 on your holiday house in Torquay in May 2009.[23]

132 The impact on the victims is also highly significant in determining the gravity of these offences. As a result of your offending conduct the pool of investors, including the 71 victims, lost a total of over $17.5 million, no part of which has been repaid.[24]

133 As is so often the case, financial harm can have a significant detrimental impact on interpersonal relationships, as it did in this case. As I earlier observed, nearly all victims have suffered strain to their personal relationships. Some victims' relationships ended in divorce or separation due, at least in part, to the stresses brought on by the collapse of the punting club. Many victims no longer speak with friends and family members involved in the punting club. One victim received threatening and abusive text messages owing to his involving others in the punting club.

[21]Opening [326].
[22]Ex P1.
[23]Opening [326].
[24]Prosecution Plea Opening [2] and Submissions, dated 3 February 2020 (Ex P4) [66].

134 While I accept, at one level, investment in a horserace gambling syndicate involves a high degree of risk and on this basis the present case is distinguishable from some other cases of investment frauds where the victims are assured their money is safe,[25] to borrow T Forrest J's phrase, 'In the language of the turf – [your victims] didn't get a run for their money'.[26] Nonetheless, I agree with your counsel's submission that there is a valid distinction between the present seriously fraudulent scheme and 'the more serious type which encourages small investors to part with their savings, on the basis of assurances that their investment is secure.'[27] Having said that, over a long period of time, you displayed an extremely high level of dishonesty and deceptive practices which were designed to convince members of the punting club you had a unique system for backing winners.

135 The objective seriousness of your offending conduct, and the level of your moral culpability, is evidenced by your audacity and your blatant and brazen dishonesty. The level of deception in this case is of a very high order. This is illustrated by the following conduct:

136 (a) The extent of the deception in the betting results sheets.

137 (b) The invention of a fictional system or formula for winning on horseracing.

138 (c) The invention of Daniel Maxwell or 'Max' as an international betting agent or conduit, which you used to help conceal your crimes and effectively discouraged concerned 'investors' in the punting club withdrawing their funds, thereby delaying the scheme's inevitable collapse.

139 (d) The fiction of the requirement for thresholds and the availability of rebates which had the effect of encouraging 'investors' to commit further

[25]See eg *R v Magnus* [2012] VSC 38 [13], [23] and [24] (T Forrest J).
[26]Ibid [23].
[27]Ibid [24].

funds to the scheme or leave their existing committed funds in the scheme.

140 (e) Forging a deed purporting to give you control of a non-existent punting club joint account. This was sent from a falsified email account in the name of 'Max' by you to yourself and shown by you to 'investors' and others. This is an uncharged act which ultimately your counsel withdrew his objection to me considering as part of the context of your offending conduct in relation to Charge 2.[28]

141 Taken overall, your offending involved a very high level of dishonesty and grave breaches of trust. Through your pernicious greed and insatiable desire for personal acclamation, you destroyed the lives and financial security of your family, friends and associates.

142 I assess your moral culpability as being very high. It is clear you must have known the impact your offending would have on the victims. Yet you continued your deceptive scheme unrelenting and unrepentant. The audaciousness of your behaviour is breathtaking. This consideration is ameliorated to some extent on account of the roles your borderline personality disorder and narcissistic personality disorder played in precipitating and continuing your offending conduct.

143 Nonetheless, the offences you committed were protracted (lasting in total some six years), involved the very large sum of over $17.5 million (which represents your personal gain), involved countless criminal acts and were committed to support a luxurious lifestyle and an aggrandising self-image.

144 Denunciation, just punishment and general deterrence, moderated on account of the application of *Verdins* principles to your case, nevertheless need be given significant weight in my instinctive synthesis.

[28] Opening [299].

145 Personal Circumstances

146 You were born on 2 April 1965 and you are now aged 56 years. At the start of the offending, you were aged 42 and it continued until you were aged 48.

147 You are of Greek heritage. You grew up in the housing commission flats in Prahran as your parents' only child. Your father died suddenly of pneumonia when you were aged six. You told clinical psychologist Alison Mynard, who conducted a psychological assessment on you on 22 January 2020, your mother blamed the death of your father on you. Your mother passed away in 2017.

148 You attended Windsor Primary School between 1970 and 1976. Between 1978 and 1982, you attended Prahran High School. At school you were a talented sportsman and captained the football team in Year 9. You left home when aged sixteen while you were in Year 11 to live with your older friends.

149 You took a gap year in 1982 when you received a sporting scholarship to Southport in the United Kingdom. Between 1983 and 1986, you attended Latrobe University. You completed your Bachelor of Arts degree with a major in psychology. Between 1987 and 1988, you completed a Bachelor of Education degree in counselling.

150 You worked at South Gippsland Toora Football Club in 1991 and worked at South Gippsland Toora Cricket Club between 1991 to 1993. Between 1993 and 1994, while being supervised by Margaret Petrie, you worked as a psychologist and counsellor providing counselling services to students and lecturers at the Melbourne campus of the RMIT University.

151 In 1996, you met your wife, Joanne Vlahos, in the Whitsundays in Queensland, where you taught windsurfing at Laguna Quays. You later moved into various roles in organisational psychology and human resources with the Pacific Hotel Group, the Four Seasons Hotel Group, Accor and the Voyager Group. Eventually, you oversaw the human resources personnel of six hotels.

152 In 1997, you worked at Melbourne Centra Airport and Centra Melbourne (now known as Holiday Inn).

153 In 1998, you worked as an area human resource manager based at the Welcome & Swanston Hotels.

154 In 1999, you worked for Sydney Accor as a human resource manager. You were transferred to set up the Accor Premier Vacation Club timeshare business for Accor's joint venture with Becton. You developed the company policies and procedures, recruited sales, marketing and call centre staff, and delivered a training program to resort staff.

155 From 2002 to 2004, you worked as the executive human resources manager for Voyager Group. There were eight staff reporting directly to you across eight resorts based in Central Australia and Far North Queensland. Your responsibilities included budgeting, strategic planning, liaising with general managers of departments, training, and negotiating enterprise bargaining agreements.

156 From 2005 to 2008, you worked with Kimberly Stephens and established Stephens Vlahos Recruitment & Consulting. Your business included executive recruitment, customer service training programs and executive level team building.

157 From 2008 to 2013, you ran The Edge punting club and BC3 entities.

158 In 2015, you delivered Surf Coast Times newspapers to 800 homes across Armstrong Creek and Warralily on a weekly basis. The job involved lifting bundles of papers into a car and onto a trolley for delivery and pushing the trolley across a 10 to 15 kilometres course to deliver the papers to each home. You delivered 800 papers within the specified timeframe each week.

159 You married Joanne in 2002. She was in court supporting you at your plea

hearings both in person and, during the COVID pandemic, online, and she is remotely present today. You and Joanne have been together for 24 years and you have two children together. Your daughter is 16 years old, and your son is 14 years old. Your daughter plays competition cricket for Victoria and your son is interested in pursuing an acting career.

160 Mental Health

161 I have had regard to the contents of a number of psychological reports tendered at the plea hearings as follows:

162 (1) Ms Alison Mynard, 'Psychological Assessment Report', dated 26 January 2020.[29]

163 (2) Mr Sam Lloyd, Letter/Report, dated 31 January 2020.[30]

164 (3) Mr Chris Drake, Psychological Report, dated 13 March 2020.[31]

165 (4) Ms Alison Mynard, Supplementary Report, dated 20 September 2020.[32]

166 (5) Dr Michael R Davis, Psychological Court Report, dated 14 February 2021.[33]

167 (6) Dr Emily Mann, Letter, dated 4 November 2021.[34]

168 I have also had regard to the *viva voce* evidence given at the plea hearing by Ms Mynard on 5 February 2020[35] and by Dr Davis on 24 November 2021,[36] and to the written[37] and oral submissions[38] of the parties regarding the state of your mental health, both at the time of the offending conduct and at the time of

[29]Ex D4.
[30]Ex D12.
[31]Ex C1.
[32]Ex D13.
[33]Ex D15.
[34]Ex D17.
[35]Transcript ('T') 5 February 2020 pp 205–227.
[36]Further Transcript ('T2') 24 November 2021 pp 6–72.
[37][Defence] Plea Skeleton Outline, dated 2 February 2020, (Ex D1) [53]–[64]; Prosecution Plea Opening [2] and Submissions, dated 3 February 2020, (Ex P4) [67]–[73]; [Defence] Plea Skeleton Outline, dated 19 November 2021, (Ex D14) [1c]; Prosecution Further Submissions, dated 19 November 2021, (Ex P5) [7]–[9].
[38]T 232.31–233.4; T 237.5–27; T2 115.7–125.23; T2 146.6–156.27; T2 162.21–163.23.

sentence, and the effect this has on the application of sentencing principles in this case.

169 This body of evidence is voluminous, complex and to some extent contradictory and it is unnecessary for me to summarise it here. Moreover, without denigrating or diminishing the views of Ms Mynard or Mr Drake, I found the report and oral evidence of Dr Davis of most assistance in determining the applicability of *Verdins* principles[39] in this case.

170 Your counsel initially submitted *Verdins* principles 1, 3, 4 ,5 and 6 are engaged in your case. During oral submissions on 24 and 25 November 2021 your counsel accepted *Verdins* principle 6 is not engaged here.[40]

171 The prosecution in its written submissions accepts, 'Any application *Verdins* principles 1 – 4 [sic] have in this matter is moderate at best'.[41] At the plea hearing on 25 November 2021, Ms Mandie, on behalf of the Director, accepted 'some moderate weight is to be given' to *Verdins* principles 1, 3 and 4 but this is 'just not significant'.[42] Moreover, the prosecution submits *Verdins* principle 5 is not engaged in your case.

172 In my opinion *Verdins* principles 1, 3, 4 and 5 are engaged here to some extent and require to be given moderate weight. In his report, Dr Davis opined:

> 114. Mr. Vlahos presents as a depressed, tearful, slightly grandiose man with restricted, yet rapidly-shifting, emotional expression. Psychological testing was marked by a degree of non-effortful negative distortion. Keeping this in mind, testing suggested a range of potential difficulties, including depressed mood, pronounced suicidal ideation, anxiety, post-traumatic stress, difficulties with the form of his thoughts, alcohol issues, physical health complaints, and some very prominent borderline, antisocial, paranoid, and obsessive-compulsive personality features.
>
> 115. Mr. Vlahos is a diagnostically complex man. It is my opinion that, at the time of our assessment interview, he was experiencing depressed mood that was at the magnitude of a major depressive episode. However, his

[39]See *R v Verdins* (2007) 16 VR 269, 276 [32] (Maxwell P, Buchanan and Vincent JJA).
[40]T2 122.31–125.23; T2 154.21–155.3.
[41]Prosecution Further Submissions, dated 19 November 2021 (Ex P5) [8].
[42]T2 162.21–163.23.

narrative, and the information available to me, also indicates that he has had chronic low mood that is not of this magnitude (a condition known as *dysthymia*) for many years. Indeed, his baseline level of mood would appear to have been dysthymic for much of his life. When individuals with pre-existing dysthymia develop a major depressive episode it is known as "double depression." More technically speaking, it is my opinion that Mr. Vlahos meets formal criteria for a diagnosis of *Persistent Depressive Disorder (dysthymia, with intermittent major depressive episodes, with current episode, moderate severity, with anxious distress)*.

116. It is perhaps clear that Mr. Vlahos' difficulties with depressed mood have also occurred on a foundation of problematic personality features. Indeed, this is not surprising given the complicated experiences of Mr. Vlahos' childhood and adolescence. It is my opinion that he has a weakly integrated personality with a poor sense of self. He has a range of borderline, narcissistic, and avoidant personality features; with some further indications of possible paranoid and obsessive-compulsive personality features. It is my opinion that Mr. Vlahos meets diagnostic criteria for both *Borderline Personality Disorder* (emotional instability, recurrent suicidal behaviour, chronic emptiness, identity disturbance, impulsivity) and *Narcissistic Personality Disorder* (fantasies of unlimited success, requires excessive admiration, sense of entitlement, interpersonally exploitative, often envious of others). I note that Mr. Vlahos also has some prominent avoidant personality features (unwilling to get involved with people unless certain of being liked, preoccupied with criticism, views self as socially inept) that do not meet full criteria for avoidant personality disorder. It is my opinion that these additional features are actually closely related to his narcissism, and reflect an underlying narcissistic vulnerability.

117. … Indeed, it is my opinion that his personality disorder is at a severe level of impairment. …

118. It is my opinion that Mr. Vlahos' personality disorder played a considerable role in his offending behaviour. Indeed, he had fantasies of unbridled success, but perhaps more importantly, a desire to help others and a strong reciprocal need for them to value and compliment him. While he convinced himself that the club was for the benefit of others, after a short period of time he was unable to place any bets. However, rather than come clean and admit this, he "couldn't say no to anyone." Indeed, Mr. Vlahos' characteristic fear of criticism and need for admiration appears to have played a powerful role in inhibiting him from admitting that the punting club was no longer a viable entity. He claimed to have been attempting to pay each member back their principal amount by investing in other business schemes. There is clearly a self-serving element to this narrative as Mr. Vlahos was also taking seemingly expensive overseas holidays at the time and continuing the charade that the club was earning money. Nonetheless, it is my opinion that he was petrified of being criticised and made ill-fated attempts to get at least some of the club members' money back. However, he must have known deep down that these schemes were destined to fail (even if he would not readily accept this fact). It would seem likely, based on the narratives of both Mr. Vlahos and his wife, that he was experiencing low mood and some distress as he found himself in this situation of his own making. It is unclear if this reached the magnitude of a major depressive episode, but was at least at the level of dysthymia, which combined with his

> dysfunctional personality features, contributed to his exceedingly poor judgment.[43]

173 In his oral evidence before me, Dr Davis elaborated upon and explained in some detail his opinions regarding your 'rather unique constellation of personality difficulties'.[44] He was extensively cross-examined by Ms Mandie on behalf of the Director.[45] I found Dr Davis to be a very impressive witness and he is, undoubtedly, one of the leading experts in personality disorders in this country.[46] I give great weight to his opinions.

174 Accordingly, I am satisfied that while greed and the pursuit of an extravagant lifestyle were very significant factors in motivating you to commit these offences, the fact you were at relevant times suffering from a borderline personality disorder and narcissistic personality disorder which were causally related to your offending conduct does reduce to some extent your moral culpability such that I will moderate the weight I give to the principles of just punishment and denunciation.[47] They are by no means eliminated and, overall, on balance, I remain of the view your moral culpability is high.

175 I am also of the opinion that these conditions together with your underlying level of dysthymia, present both at the time of the offending and at the date of sentence, justify some limited moderation in the weight I give to general deterrence[48] and specific deterrence[49] in sentencing you for these offences.

176 So far as *Verdins* principle 5 is concerned, Dr Davis accepted your current relatively high levels of anxiety and depression are largely a reaction to your current circumstances and will likely significantly abate once you are sentenced

[43] Davis Report [114]–[118] (footnotes and citations omitted).
[44] Ibid [120d].
[45] T2 44–60.
[46] See 'Statement of Qualifications of Dr Michael Davis' at Appendix B to the Davis Report pp 43–44 and his Curriculum Vitae, dated 26 January 2021.
[47] *Verdins* principle 1.
[48] *Verdins* principle 3.
[49] *Verdins* principle 4.

and can make plans for your future. However, I accept your underlying dysthymia will continue to be problematic for you and will require treatment in custody and you have some level of psychological vulnerability arising particularly from your narcissistic personality disorder. In my opinion, these conditions could mean the sentences I impose will weigh more heavily on you than they would on a person of normal mental health, but only to a very limited extent. You do appear to be coping very well in your current custodial environment.

177 Mitigating Circumstances

178 You pleaded guilty at a late stage in the proceedings on 30 September 2019. Nonetheless, I accept your pleas were entered at the earliest forensically reasonable opportunity given the prosecution's change in position regarding the number of charges you would face, and the quantum of the financial gain received by you alleged in those charges.[50]

179 You were originally charged with 347 charges with a total amount defrauded of $129,054,281.00. Through an understandably lengthy process of negotiation, you ultimately pleaded guilty before me to two charges totalling $17,520,224.97. This reflects the actual financial benefit received by you as a result of your criminal conduct rather than a total amount equivalent to each and every financial advantage you allegedly obtained from each and every victim.

180 I accept your pleas have very significant utilitarian benefit, which is of even greater than usual importance given the effects of the COVID-19 pandemic.[51] Nine trials were originally envisaged, which would have taken at least twelve months of court time to complete. Moreover, by pleading guilty you have spared the victims of your crimes and their families the further trauma of having to give evidence and be cross-examined. The prosecutor fairly accepted this was so.

[50]See *Atholwood v The Queen* (1999) 109 A Crim 465, 468 (Ipp J); *Cameron v The Queen* (2002) 209 CLR 339, 345–6 [20]–[22] (Gaudron, Gummow and Callinan JJ).

[51]See *Worboyes v The Queen* (2021) 96 MVR 344, 356–7 [34]–[39], [2021] VSCA 169 (Priest, Kaye and T Forrest JJA); *Chenhall v The Queen* [2021] VSCA 175 [29]–[30], [33]–[36] (Priest, Kaye and T Forrest JJA); *Tran v The Queen* [2021] VSCA 278 [59] (Kaye and T Forrest JJA).

181 The pleas also indicate your acceptance of responsibility for your offending conduct[52] and a willingness to facilitate the course of justice.

182 While I accept you are undoubtedly regretful for the situation in which you find yourself, and the effect this has had and will continue to have on you and your family, there is insufficient evidence before me to make a finding in your favour that you demonstrate true contrition and remorse for your offending conduct, beyond what is evident from the pleas themselves.[53]

183 You have no prior criminal history, no subsequent offences and no matters outstanding.

184 I have had regard to seven written character references tendered on your behalf[54] as well as the *viva voce* evidence of Pastor Lee Eden.[55] As an example of these testimonials, Professor Gentle and Dr Morrison describe you as being 'a highly intelligent and compassionate man, who is committed to his loving and supportive family and is committed to his church' and who has 'strong morals and values'.[56] According to Pastor Eden, you are 'a loving husband', 'a deeply committed father' and 'an extremely caring and empathetic person'. You are 'not only loved but held in high esteem within the church community'.[57] Mr Palmer describes you as being 'a kind, caring and considerate person'.[58] Other testimonials describe you a being a supportive friend who engages in volunteer work and who contributes significantly to your local cricket club and the Gateway Church.

185 Accordingly, I accept your offending conduct is an aberration of otherwise good

[52]See email from Bill Vlahos to his wife Joanne dated 28 November 2013 (Appendix A to Ex D3).
[53]See eg *Barbaro v The Queen* (2012) 226 A Crim R 354, 364–365 [32]–[38] ((Maxwell P, Harper JA and T Forrest AJA).
[54]Pastor Lee Matthew Eden, Senior Pastor Gateway Church Geelong, dated 27 January 2020 (Ex D5); Prof Alex Gentle and Dr Heather Morrison, undated (Ex D6); Barbara Reeves, dated 21 January 2020 (Ex D7); Barry F Mills, dated 2 February 2020 (Ex D8); Pastor Phil Ward, retired Pastor Gateway Church Geelong, dated 27 January 2020 (Ex D9); Timothy Michael Painter, dated 20 January 2020 (Ex D10) and Nicholas Johnson, date 25 January 2020 (Ex D11);
[55]T1 228–232.
[56]Ex D6.
[57]Ex D5.
[58]Ex D10.

character and I take this into account in your favour. I must be careful to not reduce the weight I give to this factor, while treating your breach of trust as an aggravating circumstance of your offending conduct.[59]

186 The effect of delay is a mitigating circumstance in your case. It is now over seven years since your house was searched by police in 2014 and over five years since you were charged in 2016.

187 As the Victorian Court of Appeal observed in *Rodriguez v DPP (Cth)*:[60]

> Delay is normally relevant in two ways. First, it is relevant to rehabilitation that has occurred during the delay and the effect that has in turn on specific deterrence. Secondly, delay is relevant in the sense that the anxiety and uncertainty of having the prospect of a sentence hanging over one's head during the period of delay is akin to punishment in itself.[61]

188 So far as your rehabilitation during the period of delay is concerned, it is noteworthy you have committed no further offences since the present offending concluded in December 2013. In the meantime you have undergone counselling at your own initiative, and you have been a hard-working and useful member of society.

189 While on remand in prison, your initially performed the role of a chemical billet and graduated to the position of orientation facilitator. You now have taken on a highly responsible and coveted role as a peer listener. As a peer listener in prison, you represent prisoners in meetings with senior prison staff as well as managing the culture of the yard. You have used your qualifications in psychology and counselling to informally counsel other prisoners and assist them with their general problems.

190 You have also assisted other prisoners completing paperwork including Adult Parole Board and Department of Health and Human Services forms and writing

[59] See *SD* [31]; *Torrefranca v The Queen* [2021] VSCA 157 [33]–[41] (McLeish and Osborn JJA).
[60] (2013) 40 VR 436.
[61] Ibid 445–6 [36] (Warren CJ and Redlich JA) (citations omitted).

letters to their lawyers. You have also completed a number of programs[62] and you intend to undertake a PhD through Deakin University on recidivism. You have also conducted faith-based meetings and coached the football team.

191 This all augers well for your prosects for rehabilitation, which I consider are very good, provided you can obtain effective treatment for your mental health conditions and thereby reduce the risk of you falling into your old habits and reoffending.

192 So far as delay akin to punishment is concerned, since you were charged in relation to these offences you have had the very real prospect of a lengthy sentence of imprisonment hanging over your head. Undoubtedly, this would have caused you stress and anxiety. I take the punitive effects of delay into account in your favour.

193 The effects of the COVID-19 pandemic are relevant to sentencing because:

194 (a) An offender is a higher risk of contracting COVID–19 if they are incarcerated (presuming an outbreak in custody).[63]

195 (b) As I previously observed, the inherent utilitarian value of a guilty plea is greater during the pandemic.[64]

196 (c) The pandemic is causing additional stress and concern for those incarcerated and their families, as it is for every member of the community.[65]

197 (d) The pandemic can impact on visits, work and educational opportunities, depending on the number of cases of COVID-19 in the community at any given time.

198 Your counsel advised me of the reduced visiting opportunities with your wife and children brought about by the COVID pandemic and the effects this has had on

[62] See Ex D18.
[63] *The Queen v Madex* [2020] VSC 145 [52].
[64] *DPP v Bourke* [2020] VSC 130 [32].
[65] *Brown v The Queen* [2020] VSCA 60 [48].

you. You have suffered anxiety, stress and constant worry over your children's circumstances while you have been in custody. I take this added burden of custody and your concern for your family's wellbeing into account.

199 I consider I should give some weight to specific deterrence in sentencing you but very little weight to protection of the community. So long as you receive treatment for your mental conditions, I consider you are unlikely to reoffend, but the need for appropriate treatment, whist in custody and upon your release, is paramount. No doubt you have received a salutary lesson from being charged and convicted of the present offences and I believe you are starting to gain some insight into the reasons why you offended in such a spectacular manner.

Application of Sentencing Principles

200 I have considered current sentencing practice for the offence before me as informed by the decisions of the High Court of Australia in *R v Kilic*[66] and *DPP (Vic) v Dalgliesh (a Pseudonym)*[67] and the Victorian Court of Appeal decision in *DPP v Zhuang*.[68] I have also had regard to the comparable cases relied upon by the parties.[69]

201 While current sentencing practice is relevant to the sentences I impose on you, it is only one of a number of sentencing considerations I must consider in imposing just sentences in your case.[70]

202 Moreover, it is always difficult to gauge more than a general yardstick from so-called 'comparable cases', given the wide range of offending conduct that can constitute the offences before me and the myriad of personal circumstances

[66](2016) 259 CLR 256, 266–8 [21]–[25] (Bell, Gageler, Keane, Nettle and Gordon JJ).
[67](2017) 262 CLR 428 (Kiefel CJ, Bell, Gageler, Keane and Gordon JJ).
[68](2015) 250 A Crim R 282, 292 [30]–[31] (Redlich, Priest and Beach JJA). See also *Williams (a pseudonym) v The Queen* [2021] VSCA 35 [21]–[[25] (Priest and Kyrou JJA) ('*Williams*').
[69]*R v Rousetty* (2008) 24 VR 253; *R v Fernandez* [2006] VSCA 38; *R v Jordanou* [2018] VCC 1282; *Poursanidis v The Queen* (2016) 50 VR 681; *Wells v The Queen* [2018] VSCA 79; *Haamid (a pseudonym) v The Queen* [2018] VSCA 330; *Porcaro v The Queen*; [2015] VSCA 244; *Hoy v The Queen* [2012] VSCA 49; *Yusuf v The Queen* [2010] VSCA 266; *Zaia v The Queen* [2020] VSCA 9; *DPP v Gonzalez* [2019] VCC 1713; *Iliopoulos v The Queen* [2017] VSCA 384.
[70]See *DPP (Vic) v Dalgliesh (a Pseudonym)* (2017) 262 CLR 428.

pertaining to individual offenders. Nonetheless, to the extent I have been able to gain assistance from these cases, I have sought to do so in your case.

203 The basic purposes for which a court may impose a sentence are just punishment, deterrence, both specific and general, rehabilitation, denunciation and protection of the community. In sentencing you, I must have regard to a range of factors. In general terms, these include the seriousness of the offence, your culpability for it, the effect of the offence on any victim and your personal circumstances.

204 I am required to balance the interests of the community in denouncing criminal conduct with the interests of the community in seeking to ensure that, so far as is possible, you are rehabilitated and reintegrated into society.

205 As I earlier observed, denunciation, just punishment and general deterrence are very important sentencing considerations for offences of this kind. Whilst these principles must be given significant weight in my instinctive synthesis, I have moderated the weight I have given these considerations on account of your borderline personality disorder and narcissistic personality disorder and the role they played in your offending conduct.

206 For the reasons previously stated, I need to give some weight to specific deterrence and little weight to protection of the community. I assess your prospects for rehabilitation as being very good.

207 Mr Vlahos, I have formed the view that a sentences of imprisonment are the only sentences appropriate to achieve the purposes for which these sentences are imposed.[71] I will order a measure of concurrency between the two charges to reflect their common features and their overlapping nature and to give effect to the totality principle.

[71] See *Sentencing Act 1991* s 5(4).

208 Mr Vlahos

209 On Charge 1 (obtaining a financial advantage by deception) you are convicted and sentenced to imprisonment for six years.

210 On Charge 2 (obtaining a financial advantage by deception) you are convicted and sentenced to imprisonment for five years.

211 I order that three years of the sentence imposed on Charge 2 be served cumulatively with the sentence imposed on Charge 1, making a total effective sentence of imprisonment for nine years.

212 I order that you serve a minimum of six years' imprisonment before becoming eligible for parole.

213 I declare 682 days (not including this day) as the period of pre-sentence detention to be reckoned as already served under this sentence and I direct the fact that declaration was made and its details be noted in the records of the court.

214 Pursuant to s 6AAA of the *Sentencing Act 1991* I state that the sentence I would have imposed on you but for your pleas of guilty is a total effective sentence of eleven years and six months' imprisonment with a non-parole period of eight years and six months.

215